

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: DELAWARE

TRANSFER OF ASSETS

1917(c) The agency provides for the denial of certain Medicaid services by reason of disposal of assets for less than fair market value.

1. Institutionalized individuals may be denied certain Medicaid services upon disposing of assets for less than fair market value on or after the look-back date.

The agency withholds payment to institutionalized individuals for the following services:

Payments based on a level of care in a nursing facility;

Payments based on a nursing facility level of care in a medical institution;

Home and community-based services under a 1915 waiver.

2. Non-institutionalized individuals:

- ☐ The agency applies these provisions to the following non-institutionalized eligibility groups. These groups can be no more restrictive than those set forth in section 1905(a) of the Social Security Act:

The agency withholds payment to non-institutionalized individuals for the following services:

Home health services (section 1905(a)(7));

Home and community care for functionally disabled and elderly adults (section 1905(a)(22));

Personal care services furnished to individuals who are not inpatients in certain medical institutions, as recognized under agency law and specified in section 1905(a)(24).

- ☐ The following other long-term care services for which medical assistance is otherwise under the agency plan:

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3. Penalty Date—The beginning date of each penalty period imposed for an uncompensated transfer of assets is:
- ☒ the first day of the month in which the asset was transferred;
- ☐ the first day of the month following the month of transfer.
4. Penalty Period - Institutionalized Individuals—
In determining the penalty for an institutionalized individual, the agency uses:
- ☒ the average monthly cost to a private patient of nursing facility services in the agency;
- ☐ the average monthly cost to a private patient of nursing facility services in the community in which the individual is institutionalized.
5. Penalty Period - Non-institutionalized Individuals—
The agency imposes a penalty period determined by using the same method as is used for an institutionalized individual, including the use of the average monthly cost of nursing facility services;
- ☐ imposes a shorter penalty period than would be imposed for institutionalized individuals, as outlined below:

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6. Penalty period for amounts of transfer less than cost of nursing facility care--

a. Where the amount of the transfer is less than the monthly cost of nursing facility care, the agency:

- ☒ does not impose a penalty;
- ☐ imposes a penalty for less than a full month, based on the proportion of the agency's private nursing facility rate that was transferred.

b. Where an individual makes a series of transfers, each less than the private nursing facility rate for a month, the agency:

- ☒ does not impose a penalty;
- ☐ imposes a series of penalties, each for less than a full month.

7. Transfers made so that penalty periods would overlap--

The agency:

- ☒ totals the value of all assets transferred to produce a single penalty period;
- ☐ calculates the individual penalty periods and imposes them sequentially.

8. Transfers made so that penalty periods would not overlap--

The agency:

- ☒ assigns each transfer its own penalty period;
- ☐ uses the method outlined below:

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9. Penalty periods - transfer by a spouse that results in a penalty period for the individual--

- (a) The agency apportions any existing penalty period between the spouses using the method outlined below, provided the spouse is eligible for Medicaid. A penalty can be assessed against the spouse, and some portion of the penalty against the individual remains.

In accordance with State Medicaid Manual section 3258.5J the agency will apply 100% of the penalty against the institutionalized individual. If the spouse becomes institutionalized and eligible for Medicaid, the penalty (or remaining penalty) will be apportioned equally (50-50) against each spouse with the total penalty imposed on both spouses not to exceed the length of the penalty originally imposed on the individual.

- (b) If one spouse is no longer subject to a penalty, the remaining penalty period must be served by the remaining spouse.

10. Treatment of income as an asset--

When income has been transferred as a lump sum, the agency will calculate the penalty period on the lump sum value.

- ☐ The agency will impose partial month penalty periods.

When a stream of income or the right to a stream of income has been transferred, the agency will impose a penalty period for each income payment.

- ☐ For transfers of individual income payments, the agency will impose partial month penalty periods.
- ☒ For transfers of the right to an income stream, the agency will use the actuarial value of all payments transferred.
- ☐ The agency uses an alternate method to calculate penalty periods, as described below:

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11. Imposition of a penalty would work an undue hardship—

The agency does not apply the transfer of assets provisions in any case in which the agency determines that such an application would work an undue hardship. The agency will use the following procedures in making undue hardship determinations:

The State Medicaid agency does a medical assessment of all individuals applying for or receiving long-term care services. It assumes that the absence of these services would cause an undue hardship if there were no State funded facility bed available.

All applicants/recipients are notified when an undue hardship exception exists.

Existence of an undue hardship waiver will be determined within ten (10) working days of the applicant's/ recipient's claim of undue hardship.

All adverse actions can be appealed through the State's fair hearing officer.

The following criteria will be used to determine whether the agency will not count assets transferred because the penalty would work an undue hardship:

Undue hardship exists when application of the transfer of assets provisions would deprive the individual of medical care such that his/her health or his/her life would be endangered. Undue hardship also exists when application of the transfer of assets provisions would deprive the individual of food, clothing, shelter or other necessities of life and there is no State facility available to take care of this individual in the absence of Medicaid eligibility.

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